vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.162 OF 2001

In the matter of section 433 and 434 of the Companies Act, 1956

And

In the matter of winding up of Multi-Arc India Ltd.

Mr.Cyrus Pedder ... Petitioner

Ms.Falguni Pathak i/b Rustomji & Ginwalla for Petitioner
Mr.M.S. Doctor i/b Malvi Ranchoddas & Co. for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 18, 2005**

P.C.:

. Consent terms have been filed by the parties. At the instance of the Company Registrar, the parties were directed to incorporate clause (6) of the consent terms which reads as follows:

> 6. The Petitioner hereby undertakes that it shall publish an advertisement in the newspapers as may be directed by this Hon'ble Court about withdrawal of the Petition.

2. Mr.Doctor, appearing for the Company submits

that although the parties have incorporated this clause of publication in the newspaper regarding withdrawal of the petition, there is no need to publish the same as the returnable date in the matter was 14.9.2001. The withdrawal of this Petition is subsequent to the returnable date and, therefore, this procedure which the Company Registrar has been insisting upon them in view of certain earlier orders passed by this court should be waived.

3. In the case of *Susheela Devi v/s. Basakha Singh & Ors.,* **ILR 1973 (II) 759** cited by Mr.Doctor, the learned Counsel for the Respondents, the petitioning creditor sought to withdraw the Company Petition as his dues were settled by the Company. The Court observed that such a settlement which was not between the company and its creditors but confined to only the petitioning creditor had no effect on the rights of the parties who are neither petitioning creditors nor supporting creditors. The winding up Petition in that case was withdrawn and the provisional Liquidator was discharged. The learned Counsel submits that the observations in this judgment support the submission that there is no need to publish the notice of withdrawal of the petition as it does not affect the rights of any other creditor.

4. In the present case, the petition was made returnable on 14.9.2001. Therefore, all the creditors ought to have filed their claims or petitions prior to that date. The returnable date being 14.9.2001, there is no need to publish any advertisement regarding the withdrawal in the facts and circumstances of the present case. Clause (6) of the consent terms be deleted.

5. Consent terms signed by the Petitioner, the executors of the Petitioner's estate & their advocate and the General Manager (Finance) for Multi-Arc India Limited and their Advocate are taken on record and marked 'X' for identification purpose. Order in terms of Consent terms

6. Petition is disposed off in terms of consent terms.